Case No. 94-239

SUPREME COURT
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IN THE
SUPREME COURT OF CALIFORNIA
October Term, 1994

No. _____

ROBERT JACK VOAKES,

Petitioner,

v.

AT&T COMMUNICATIONS, INC. and
TIM ESPINOZA,

Respondents.

Petition for a Writ of Certiorari to the California Court of Appeals First Appellate District, Division 3

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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August 22, 1994

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ROBERT JACK VOAKES [herein "Petitioner"] respectfully submits this Reply to Respondent's Brief in Opposition to Petition for Writ of Certiorari to review the judgment

of the California Court of Appeals, First Appellate District, Division 3.

JURISDICTION

Petitioner is invoking the jurisdiction of this Court under 28 USCS §1257(a). The Petition for Writ of Certiorari mistakenly indicated jurisdiction under 28 USCS §1254(1). The judgment on the California Court of Appeals, First Appellate District, Division 3, was entered on January 25, 1994 and a Petition for Review was denied by the Supreme Court of the State of California on April 21, 1994.

ARGUMENT

A. PETITIONER HAS PRESENTED SPECIAL AND IMPORTANT REASONS IN ORDER FOR THIS COURT TO GRANT REVIEW OF THE PRESENT CASE.

Through a variety of factual circumstances, Respondents have attempted to show that ERISA pre-empts Petitioner's state law claims. However, it is again emphasized the facts and issues of this case are distinguishable from those cases where ERISA pre-emption was found.

In his Complaint, Petitioner alleges AT&T

breached its employment contract and covenant of good faith and fair dealing by terminating Petitioner without good cause and by not following its policies and procedures found within its Personnel Guide. Petitioner has alleged that he was terminated due to a personal conflict with his supervisor TIM ESPINOZA and that AT&T was able to justify terminating Petitioner when Petitioner failed to return to work under the advice of his physician (who was not associated with the AT&T's benefit plan) when AT&T's physicians concluded Petitioner was no longer disabled or entitled to receive further benefits.

Petitioner's causes of action in no way relate to his employer's benefit plan since Petitioner does not claim reinstatement of benefits, negligent administration or mismanagement of a benefit plan, improper processing of a benefit claim, employer failure to make contributions, or any other similar type of action involving his employer's benefit plan [see Petition for Writ

of Certiorari ("Pet."), page 10-12].

Petitioner does not dispute the validity of AT&T's benefit plan nor the decisions made by the plan doctors regarding the status of Petitioner's disability and receiving benefits. The management of AT&T wrongfully and without good cause made the decision to terminate Petitioner, not the plan doctors or the benefits committee. The benefits plan does not direct the management to terminate an employee for missing work. The management of AT&T is a separate and distinct body, acting independently, from either the benefits committee or plan doctors. The management decided, without following the Personnel Guide's policies and procedures, to terminate Petitioner. Petitioner's state law causes of action arise solely from the decision of AT&T's management to terminate Plaintiff without good cause.

B. CASE LAW CITED BY RESPONDENTS DOES NOT SHOW PETITIONER'S STATE LAW CLAIMS SHOULD BE PRE-EMPTED BY ERISA

In the Petition, those cases finding ERISA pre-emption have been distinguished (see Pet. pages 10-12). A review of the cases cited by Respondents in their opposition again demonstrates that not only are these cases factually dissimilar, but also the reasons invoking ERISA pre-emption are inapplicable to the present case.

In Metropolitan Life Ins. Co. v. Taylor 481 U.S. 58 (1987), the employee was injured in a work related car accident and his employer had a disability plan covered by ERISA. When a dispute arose regarding the employee's benefits under the plan, he brought an action seeking recovery of those benefits (Ibid). As Respondents noted, the employee's state law of causes of action, including wrongful termination were pre-empted since they related to the benefits plan. Respondents allege that the issues and facts

in Metropolitan Life are indistinguishable from the present case simply because the employee in that case was evaluated by the employer's physicians. However, Petitioner, in the instant case does not seek reimplimentation of benefits or coverages. Further, Petitioner, unlike the plaintiff in Metropolitan Life, had been told by his own physician, who was not associated with the benefits plan, that he should not return to work on the date given by his employer.

In Spain v. Aetna Life Ins. Co. 11 F.3d 129 (9th Cir. 1993), the employee's widow and daughter brought a wrongful death action against the administrator of a benefits plan alleging that the employee's death was negligently caused by the administrator's denial of a medical procedure for the employee (At page 131). Although the Appellants in Spain, did not seek benefits under the plan, they did seek damages for the negligent administration of the benefits claim (Ibid). The Court held "because the state law in its

application directly 'relates to' the administration and disbursement of ERISA plan benefits", the Appellants' claims were pre-empted (emphasis added) (Ibid). Petitioner has not alleged the negligent administration of AT&T's benefits plan and his state law claims have no relation to the administration and disbursement of the plan benefits.

The Court in Spain cited Corcoran v. United Healthcare, Inc., 965 F.2d 1321 (5th Cir.), Cert. denied, _____ U.S. _____, 113 S.Ct.812 (1992); another wrongful death action because of its similarity to Spain. The Court in Corcoran, held "the principle... that ERISA pre-empts state law claims alleging the proper handing of benefit claims is broad enough to cover the [wrongful death] action asserted here" (At page 1332). Since Petitioner has not brought a wrongful death action and has not alleged improper handling of a benefits claim, Corcoran adds nothing to the argument that ERISA should pre-empt Petitioner's state law causes of action.

Respondents' reliance on Van Camp v. AT&T Information Systems 963 F.2d 119 (6th Cir. 1992) is likewise unavailing. The employee in Van Camp claims age and sex discrimination motivated his employer to force his retirement and sought reinstatement, back pay, front pay, and compensatory and exemplary damages (At page 120). In retiring, the employee signed an agreement acknowledging his decision to receive benefits under the pension plan was irrevocable and that he voluntarily retired (At page 123). In finding ERISA pre-emption for the employee's state law causes of action, the Court held "the effect of this agreement...is the fulcrum on which resolution of this dispute turns...[A] Court first would have to rule on the validity of the retirement agreement. Such a determination could be made only with reference to ERISA and would affect the existing benefit plan and the relations between Van Camp and AT&T as 'principle ERISA entities'" (citation omitted) (Ibid). Since no such agreement exists in the instant case

and unlike the plaintiff in Van Camp, Petitioner is not seeking lost benefits or reinstatement pursuant to the benefits plan. Therefore, the reasons for ERISA pre-emption in Van Camp are inapplicable in this case.

Lastly, in Anderson v. Electronic Data Systems, Corp. 11 F.3d 1311 (5th Cir. 1994), the employee alleged he was demoted and terminated for failing to carry out illegal acts, including: being asked to approve or pay invoices on behalf of pension portfolios without approval of the pension trustees; and writing up minutes of meetings he did not attend relating to the retirement plans (At page 1312). The Court found these were illegal violations of ERISA and that the employee's claims depended on the existence of a pension plan and, therefore, were "related to" an ERISA plan (At page 1314). In addition, the employee's claim for wrongful termination directly conflicted with ERISA enforcement provision, 29 USCS §1140 which addresses discharges for exercising ERISA

rights or for interfering with the attainment of ERISA rights, as well as discharges for providing information or testimony relating to ERISA (Ibid).

In this case, Petitioner's state law claims do not depend on the existence of a benefits plan. Moreover, Petitioner's state law claims do not conflict with any of ERISA's provisions.

C. PETITIONER HAS SET FORTH SUFFICIENT CONSIDERATION FOR THIS COURT TO REVIEW THE CALIFORNIA APPELLATE COURT'S DECISION

The U.S. Supreme Court may review a Writ of Certiorari for the following reason:

> When a state court or United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. . .[United States Supreme Court Rule 10.1(c)].

Contrary to Respondents' allegations, Petitioner does not have to show that a conflict exists between the California Appellate Court decision and another Court. The California Appellate Court has decided an important federal question by expanding the

scope of ERISA's pre-emption far too broadly. Whether ERISA's pre-emption should be expanded to include an employee's state law claims which have no relation to and are independent of an employer's benefit plan is a decision that should be made by this Court.

Petitioner's lawsuit is not analogous to the case law cited by Respondents simply because the California Court of Appeals held ERISA pre-empts Petitioner's state law claims. This is especially true when considering that both the trial court and the Federal District Court ruled in favor of the Petitioner. None of the case law cited by Respondents support pre-emption in the present case. However, the cases cited by Petitioner show that state law causes of action will not be pre-empted if they are unrelated to or too tenuous, remote or peripheral to the employer's benefit plan [Sorosky v. Burroughs, Corp. 826 F.2d 794 (9th Cir. 1987); Barnick v. Longs Drug Stores, Inc. (1988) 203 Cal. 3d 377; Schlenz v. United Airlines, Inc. 678 F.supp. 230 (N.D. Cal.

1988); and Shaw v. Delta Airlines, Inc. 463 U.S. 85 (1983)].

As outlined above, Petitioner's causes of action are "unrelated" and too "tenuous", "remote", and "peripheral" to AT&T's plan.

D. TO PERMIT REVIEW OF PETITIONER'S WRIT OF CERTIORARI WILL NOT UNDERMINE THE FOUNDATION OF ERISA

Petitioner's state law claims do not, as Respondents suggest, only involve a dispute concerning the benefit plan physicians' decision that Petitioner was no longer medically disabled. Instead, Petitioner's state law claims involve whether AT&T's management had good cause to terminate Petitioner and whether the policies and procedures within AT&T's Personnel Guide were followed. Petitioner has never disputed the decision of the AT&T benefits committee or the plan physicians, but instead the management's decision to terminate Petitioner. Further, Petitioner is not requesting that a jury evaluate when employees should be granted or

denied benefits under AT&T's plan. As stated above, Petitioner's causes of action are based on whether AT&T had good cause to terminate Petitioner and whether its policies and procedures within its Personnel Guide were followed.

If this court denies review to Petitioner's case, a severe blow will be dealt to workers around this country. Indeed, every time an employee is unjustifiably terminated while he was sick or injured his only legal remedy would be ERISA rather than the well established common law and statutory remedies for wrongful termination which provide far greater rights to the worker. Furthermore, the employee's lawsuit would be governed by ERISA even if he alleged that his termination was for reasons other than his illness or injury and even if he was not claiming benefits under an ERISA plan. Such a precedent would allow ERISA to effectively usurp an entire body of wrongful termination law which took years in the making.

CONCLUSION

By holding ERISA pre-empts Petitioner's state law causes of action, the ERISA pre-emption has been unjustifiably and unfairly expanded far beyond its intended scope. Based on the foregoing reasons, Petitioner respectfully requests the Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED

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